

MAY 14 1979

MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No.

78-1715

**DONNIE FRANKLIN COLLUM
AND
SCOTTY LYNN COLLUM**

Petitioners

VERSUS

STATE OF LOUISIANA

Respondent

**PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF LOUISIANA**

**GRISBAUM & KLEPPNER
FERDINAND J. KLEPPNER
Professional Building
3224 N. Turnbull Drive
Metairie, Louisiana 70002
ATTORNEY FOR PETITIONERS**

(305)

appears the following:

In addition, we have studied the transcripts of these two lengthy taped statements made three days apart beginning two days after the crime occurred. Defendant Trudell was responding to a series of questions to which he gave coherent and responsive answers with only very minor inconsistencies. He indicated that he wanted to explain what happened to the authorities so as to exonerate his brother (who had been arrested for the crime). The transcripts reveal that Officer Reynolds who questioned defendant asked straightforward questions which did not lead the defendant toward particular inculpatory answers. In short, the statements themselves reveal that defendant was lucid, oriented as to time and place, and apparently in control of his faculties at that time. When we review, therefore, the state's un rebutted predicate testimony that the statements were made voluntarily, the sanity commission reports indicating that the statements show "no psychosis," and the lucid statements themselves, we conclude that the state did establish beyond a reasonable doubt that the statements were made voluntarily. Accordingly, we find no merit in defendant's assignment of error.

Clearly this objection is without merit.

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In re Creek, 243 A. 2d 49 (D.C. 1st Ct. App. 1968); State v. Lloyd, 212 N.W. 2d 671 (Minn. 1973); State v. Sinderson, 455 S.W. 2d 486 (MO. 1970); In re Rust, 278 N.Y.S. 2d 333 (Kings Cty, Fam. Ct. 1967) Leach v. State, 428 S.W. 2d 817 (Tex. Civ. App. 1968); Forrest v. State, 76 Was. 2d 84, 455 P.2d 368 (1969).

The state has the burden of showing that a confession by a juvenile is freely and voluntarily given and not extracted by force, threats, coersisions, intimidations, or promises. Haley v. Ohio, 332 US 596, 68 S Ct 302, 92 L Ed 224 (1948). While ordinarily in civil procedures the burden is on the moving party to prove his case by a preponderance of the evidence, in juvenile proceedings, "no child shall be adjusted to be delinquent in the absence of proof beyond a reasonable doubt . . .". R.S. 13:1579.1. Accordingly it would appear that through the jurisprudence and statutory law that the same rules of evidence are applicable to determine the admissibility of a confession of a juvenile as are applicable to an adult in a criminal proceeding.

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ADMISSIBILITY OF 4:00 P.M. STATEMENT

A. Miranda Warning.

After Scott Collum was arrested and while in route from the trailer park to the sub-station, Detective Robert Woodrum

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RULES APPLICABLE TO DETERMINE ADMISSIBILITY OF CONFESSION OF A JUVENILE

Juvenile preceedings are conducted in accordance with the general rules of precedure used in civil cases. R.S. 13:1579. However, by consent of the parties, the admissibility of the statements of Scott Collum is being determined in advance of trial pursuant to a motion to suppress as authorized by Article 703 of the Code of Criminal Procedure. The rules of evidence prevailing in civil proceedings are applicable to a proceeding to determine if a child is delinquent. R.S. 13:1579.1. Generally speaking in order to admit a statement which qualifies as an admission or a declaration against interest in a civil proceeding it is not (306) necessary to lay the foundation of a Miranda warning or the free and voluntary nature of the statements as required by Article 703 of the Code of Criminal Procedure and R.S. 15:451. See Pugh, Louisiana Law of Evidence, Chapter 6, Paragraphs D and E at pages 435 through 446. However, in a juvenile proceeding, a child is entitled to the constitutional privilege against self-incrimination. R.S. 13Lk579; In re Gault, 387 US 1, 87 S Ct. 1428, 18L Ed 2d 527 (1967). Accordingly, it would appear that before the confession of a juvenile is admissible into evidence the state bears the burden of showing that the appropriate Miranda warning has been given. United States v. Fowler, 476 F. 2d 1091 (7th Cir, 1973); In re Teters, 264 Cal App 2d 816 70 Cal. Rptr. 749 (1968);

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advised him of his Miranda rights from a card that he carried on his person. That card specifically stated as follows:

You have the absolute right to remain silent.

Anything you say can and will be used as evidence against you in a court of law.

You have the right to consult with an attorney, to be represented by an attorney, and to have an attorney present before and during questioning.

If you cannot afford an attorney, one will be appointed by the court, free of charge, to represent you before and during questioning if you desire.

See pages 12, 13, 14, 27, 28, 46, 54, and 55 of the transcript. Detective Woodrum then asked Scott Collum if he understood these rights and read the waivers on the back side of the card. These waivers stated as follows:

Do you understand the rights I just explained to you?

With these rights in mind are you willing to talk to me about the charges against you?

Thereafter, Scott Collum indicated that he understood his rights and was willing to

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talk to the officers about the charges. After arriving at the sub-station the officers commenced interviewing Donnie Collum first. After that interview was terminated they started an interview with Scott at approximately 4:00P.M. Scott was reminded of his Miranda rights and advised the officers that he understood them and consented to speak with them concerning the auto theft. After discussing the theft with Scott the officers advised him that they wished to speak to him about his father's death and again reminded him of his Miranda rights. Scott consented to speak with the officers about this subject. At approximately (308) 6:00P.M. the two police officers commenced taking a taped interview from Scott which was concluded at approximately 6:50 p.m. At no time during the course of the interview and the taking of the taped statement did Scott Collum request the presence of his mother or an attorney. See page 26, 48 and 49 of the transcript. The record and tape do not indicate that that fact that the statement was taken at a police station out of the presence of the defendant's mother in any way influenced or intimidated him into giving it. From all of the above it is the opinion of this court that the evidence shows beyond a reasonable doubt that Scott Collum was properly and adequately advised of his Miranda rights and knowingly and intelligently consented to discuss the car theft and the murders with the police officers.

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B. Free and Voluntary Nature of Statement

The record shows that during the course of the 4:00 p.m. interview and tape statement that no promises were made to the defendant, no force was used, he was not threatened in any manner. See page 18, 19, and 48 of the transcript. During the course of the interview he was given water or coffee and cigarettes. See page 39 and 66 of the transcript. The court listened to the tape of the interview with Sergeant Sodaro and Detective Woodrum in chambers pursuant to the agreement of the parties and it indicated that the officers did not attempt to frighten him, intimidate him or promise him anything to get the statement. The tape indicated that the defendant was responding to a series of questions to which he gave coherent and responsive answers. The police officers asked straight forward questions which did not lead the defendant toward particular inculpatory answers. The tape reveals that the defendant was lucid, oriented as to time and place, and apparently in control of his faculties at the time the statement was given. The state has established the free and voluntary nature of the statement beyond a reasonable doubt as required by law.

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For the above reasons it is the opinion of this court that the state has met its burden of proving the admissibility of the

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during the interview did he request to have an attorney present or request that his mother be present. See page 93, 94, 96, 111, 128, and 128 of the transcript. During the interview Scott Collum appeared to be alert, appeared normal and was not under the influence of drugs or alcohol. See pages 91, 94, 128, and 129 of the transcript. Accordingly it is the opinion of this court that the evidence shows beyond a reasonable doubt that Scott Collum was properly given a Miranda warning and knowingly and intelligently consented to speak with the LaFourche Parish Deputies.

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B. Free and Voluntary Nature of Statement

The record shows that during the course of the interview the defendant was not cuffed or shackled. He was not threatened, promised anything, coerced, intimidated, and his statement was freely and voluntarily given. See pages 96 and 128 of the transcript Pursuant to the agreement of the parties the court played the tape of the interview held with Detective Rodrique and Major Diaz in chambers. The tape indicated that Scott Collum was responding to a series of questions to which he gave coherent and responsive answers. The tape further showed that the police officers asked straight forward questions which did not lead the defendant toward particular inculpatory statements. The tape reveals that the

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statement given by Scott Collum at 4:00 p.m. on June 3, 1977.

ADMISSIBILITY OF THE 12:55 A.M.
STATEMENT

A. Miranda Warning

Prior to obtaining the statement from Scott Collum at 12:55 A.M. on June 4, 1977, Major Norman R. Diaz of the Lafourche Parish Sheriff's Office read the Miranda rights to him from a card that he had in his possession as follows:

1. You have a right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to a lawyer and to have him present with you while you are being questioned.
4. If you cannot afford to hire a lawyer one will be appointed to represent you before any questioning if you wish one.

Major Diaz then asked Scott if he understood these rights and he responded that he did. See pages 92, 93, 106, 107, 127, 128, 131, and 132 of the transcript. Major Diaz also reminded Scott of the rights given to him during the interview with the California authorities and he responded that he remembered them and understood them. At no time

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defendant was lucid, oriented as to time and place, and apparently in control of his faculties at the time. Prior to giving his statement the defendant was allowed to visit his mother and she was consulted about the statement prior to giving it. The record and the tape do not indicate that the fact that the statement was taken at a police station out of the presence of the defendant's mother in any way influenced or intimidated him into giving it. Accordingly it is the opinion of this Court that the state has shown beyond a reasonable doubt that this statement was freely and voluntarily given.

For the above reasons it is the opinion of this court that the tape statement given by Scott Collum to Major Diaz and Detective Rodrigue at 12:55 A.M. on June 4, 1977, is admissible in these proceedings and was taken in accordance with the requirements of law.

ORAL INCULPATORY STATEMENTS

At the trial of the motion to suppress, evidence was taken concerning oral statements given by Scott Collum while going to Van Horne, Texas and in Van Horne, Texas. The admissibility of these statements will not be determined in this proceeding. Oral (311) pre-trial statements are not properly the subject of a motion to suppress pursuant to Article 703 of the Code of Criminal Procedure State v. Perkins, 337 So. 2d 1145 (1976); State v. Daniels, 262 La 475, 263

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So 2d 859 (1972); State v. Hudson, 253 La
992, 221 So 2d 484 (1969).

For the above reasons the motion to
suppress in this case is denied and judg-
ment will be rendered accordingly.

Respectfully submitted,

/s/ Walter I. Lanier, Jr.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District
Court
Parish of Lafourche
Division "A"

C E R T I F I C A T E

I certify that a copy of these reasons
for judgment has been forwarded to Mr. John
J. Erny, Jr., Assistant District Attorney,
P. O. Box 9, Larose, Louisiana 70373, Mr.
Jerome J. Barbera, III, Assistant District
Attorney, 310 St. Philip Street, Thibodaux,
Louisiana, 70354, and Mr. Christopher Smith,
P.O.Box 479, Golden Meadow, Louisiana, 70357,
sufficient postage annexed thereto.

Thibodaux, Louisiana, this 29th day of
December, 1977.

/s/ Walter I. Lanier, Jr.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District
Court

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Parish of Lafourche
Division "A"

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STATE OF LOUISIANA

JUVENILE COURT

IN THE INTEREST OF

17th JUDICIAL
DISTRICT

SCOTTY LYNN COLLUM

PARISH OF LAFOURCHE

SPECIAL JUVENILE NO. 1233 STATE OF LOUISIANA

DIVISION "A"

JUDGMENT ON MOTION TO SUPPRESS

These matters came to be heard by the
Court on a Motion to Suppress Evidence filed
by the defendant and the Court after hearing
the pleadings, the evidence, the law and the
argument of counsel rendered the following
judgment:

IT IS ORDERED, ADJUDGED, AND DECREED
that the motion to suppress filed by the
defendant, Scotty Lynn Collum, be and it is
hereby overruled and dismissed.

JUDGMENT RENDERED, READ AND SIGNED this
29th day of December, 1977, in open Court at
Thibodaux, Parish of Lafourche, State of
Louisiana.

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/s/ Walter I. Lanier, Jr.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District
Court
Parish of Lafourche
Division "A"

TRANSCRIPT OF PROCEEDINGS
STATE VS. DONNIE FRANKLIN COLLUM
VOLUME I

(11)

| | |
|------------------------|------------------------------|
| STATE OF LOUISIANA | STATE OF LOUISIANA |
| VS. NO. 78839 | PARISH OF LAFOURCHE |
| DONNIE FRANKLIN COLLUM | 17TH JUDICIAL DISTRICT COURT |

MOTION TO SUPPRESS

TO THE HONORABLE THE JUDGES OF THE SEVENTEENTH JUDICIAL DISTRICT COURT SITTING IN AND FOR THE PARISH OF LAFOURCHE, STATE OF LOUISIANA:

On motion of Donnie Franklin Collum, through undersigned counsel and upon suggesting to this Honorable Court that the State has indicated that it intends to rely on a statement allegedly made by defendant in the prosecution of this matter; and,

UPON FURTHER SUGGESTING TO THIS HONORABLE COURT that any statement allegedly taken from defendant was done so in violation of his rights under the Constitutions and laws of the United States and the State of Louisiana, and should be suppressed; and,

UPON FURTHER SUGGESTING TO THIS HONORABLE COURT that the State of Louisiana should be ordered to show cause, if any it can, on a date and at a time to be determined by this Honorable Court why any statement or confession inculpatory or exculpatory, verbal or written, allegedly taken

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from the defendant herein should not be suppressed and excluded from evidence in the prosecution of this cause.

O R D E R

Considering the foregoing motion and the allegations contained therein;

IT IS ORDERED that the State of Louisiana, through the District Attorney, show cause, if any it can, on the 2nd day of September, 1977, at 10:00 o'clock A.M., why any statement or confession, verbal or written should not be suppressed and excluded from evidence in the prosecution of this cause.

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STATE OF LOUISIANA 17TH JUDICIAL DISTRICT
 COURT
VS. NOS. 78836, 78837, PARISH OF LAFOURCHE
78838 and 78839 STATE OF LOUISIANA
 DIVISION "A"

JUDGMENT ON MOTION TO SUPPRESS

These matters came to be heard by the Court on a Motion to Suppress Evidence filed by the defendant and the Court after hearing the pleadings, the evidence, the law and the argument of counsel, rendered the following judgment:

IT IS ORDERED, ADJUDGED, AND DECREED that the motion to suppress filed by the defendant, Donnie Franklin Collumbe and it is hereby overruled and dismissed.

JUDGMENT RENDERED, READ AND SIGNED this 5th day of December, 1977, in open Court at Thibodaux, Parish of Lafourche, State of Louisiana.

/S/ WALTER I. LANIER, JR.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District
Court
Parish of Lafourche
Division "A"

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STATE OF LOUISIANA
PARISH OF LAFOURCHE

I HEREBY CERTIFY that the following, to-wit:

| | | |
|------------------------|---|------------------------|
| STATE OF LOUISIANA |) | CHARGE: INDICTMENT FOR |
| VS. NO. 78836 |) | FIRST DEGREE |
| VS. NO. 78837 |) | MURDER |
| VS. NO. 78838 |) | CHARGE: INDICTMENT FOR |
| VS. NO. 78839 |) | FIRST DEGREE |
| DONNIE FRANKLIN COLLUM |) | MURDER |
| | | CHARGE: INDICTMENT FOR |
| | | FIRST DEGREE |
| | | MURDER |
| | | CHARGE: INDICTMENT FOR |
| | | FIRST DEGREE |
| | | MURDER |

ON MOTION OF THE STATE THE COURT ORDERED THAT NUMBER 78837 BE TRANSFERRED TO DIVISION "B".

THE COURT FURTHER ORDERED THAT A PRE-TRIAL CONFERENCE BE HELD ON ALL FOUR MATTERS ON JANUARY 11, 1978 AT TEN O'CLOCK A.M. AT THE THIBODAUX COURT HOUSE IN THIBODAUX, LOUISIANA BEFORE DIVISION "B", WITH NOTICE ISSUE TO ALL PARTIES.

is a true and correct copy of the minutes of the 17th Judicial District Court in and for the Parish of Lafourche, Louisiana, dated December 5, 1977 INSOFAR as they relate to the matter entitled STATE OF

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LOUISIANA VS. DONNIE FRANKLIN COLLUM NOS.
78836, 78837, 78838, 78839 of the Criminal
Docket of said Court.

IN TESTIMONY WHEREOF,

Witness my hand and
official seal, this
3rd day of March, A.D.,
1978 at Thibodaux,
Louisiana.

/S/ MARGARET RICHARD
Deputy Clerk of Court

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STATE OF LOUISIANA 17TH JUDICIAL DISTRICT
COURT

VS. NO. 78836, 78837,
78838, 78839 PARISH OF LAFOURCHE

DONNIE FRANKLIN COLLUM STATE OF LOUISIANA

PER CURIUM

STATEMENT OF FACTS

On May 27, 1977, Jessie Collum, his second wife, Lenora, and their children, Anna and Jeffrey were killed in or near the Collum trailer in the Four Point Heights subdivision near the Raceland community in the Parish of Lafourche, State of Louisiana. All of these individuals had been shot several times, and Jessie Collum was stabbed twice. On May 29, 1977, Donnie Collum (age 15) and Scott Collum (age 14) the sons of Jessie Collum and his first wife, Mrs. Peggy Mendoza, were stopped by police authorities in Benson, Arizona in a 1974 Cadillac automobile belonging to Jessie Collum. The vehicle was left in Arizona and Scott and Donnie Collum were turned over to Mrs. Mendoza, and went to her home at the Red and White Trailer Park in Victorville, County of San Bernardino, California. On Wednesday, June 1, 1977, the bodies of the Collum family were discovered. Police authorities in Lafourche Parish determined at that time that the 1974 Cadillac

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and Donnie and Scott Collum, who had been living with their father, were missing. On the night of June 1, 1977, and the morning of June 2, 1977, the Lafourche Parish Sheriff's Office sent out nationwide bulletins for the location of the Cadillac automobile belonging to Jessie Collum. On June 2, 1977, at 10:18 A.M. Central time the Lafourche Parish Sheriff's Office sent a bulletin to the San Bernardino County Sheriff's Office requesting information concerning the 1974 Cadillac and the location of Don Franklin Collum. On June 3, 1977, the Lafourche Sheriff's Office received information from the San Bernardino County Sheriff's Office concerning the location of Donnie and Scott Collum. (43) At approximately 4:30 P.M. Central time (2:30 P.M. Pacific time) warrants were issued in Louisiana for the arrest of Donnie Collum and Scott Collum for theft of the 1974 Cadillac. This information was telephoned to the San Bernardino County Sheriff's Office and then Sergeant Charles J. Sodaro, Detective Robert J. Woodrum and Detective Dennis Searcy went to trailers nine and ten at the Red & White Trailer Park in Victorville, California, and apprehended Donnie and Scott Collum. They were advised that they were charged with auto theft, were handcuffed and placed in the Sheriff's unit. Their mother, Mrs. Peggy Mendoza, who was present on the premises, was advised that they were being taken into custody for Louisiana for auto theft and told that if she would come down to the Victorville

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Sheriff's Office Sub-station she would be given more details. In the Sheriff's vehicle while going from the trailer park to the sub-station, Detective Robert J. Woodrum read the Miranda warning to Donnie and Scott Collum from a Miranda card that he carried on his person and they individually advised him that they understood their rights. Neither of the two appeared to be under the influence of alcohol or any drug at this time. When they arrived at the sub-station the two were uncuffed and placed in separate interview rooms. At approximately 3:00 P.M. (Pacific time) Detective Woodrum and Sergeant Sodaro commenced an interview with Donnie Collum. He was reminded of his Miranda rights, which he acknowledged, and asked if he would speak to the officers concerning the theft of the car. He responded yes. He was then questioned concerning the possession of the Cadillac. He was thereafter again reminded of his Miranda rights and told that his father had been shot to death. At this time he became very nervous and denied any involvement in the death. The interview was thereafter terminated at approximately 3:30 P.M. At approximately 4:00 P.M. (44) Detective Woodrum and Sergeant Sodaro commenced an interview with Scott Collum. They reminded him of his Miranda rights and asked if he wished to talk with them. He consented to do so. After about ten minutes of questioning, Scott admitted his involvement in the deaths.

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The officers then proceeded to question him concerning the details of the offenses. At approximately 6:00 P.M. the two police officers commenced taking a taped interview from Scott which was concluded at approximately 6:50 P.M. During the course of the interview with Scott Collum, Donnie Collum sent word to Sergeant Sodaro that he wished to speak with him but Sergeant Sodaro advised him that he could not do so at that time but would see him later. At approximately 8:00 P.M. Sergeant Sodaro and Detective Woodrum commenced a second interview with Donnie Collum. He was again reminded of his Miranda rights, indicated that he understood them and consented to talk with the officers. He first asked to know what Scott Collum had said and was told by the officers. He was allowed to hear a short portion of Scott's taped interview dealing with the actual killing of Jessie Collum. After hearing this, Donnie Collum indicated that Scott told it right down the line and at 8:11 P.M. he commenced giving a taped statement to the officers which was concluded at 8:40 P.M. At approximately 9:30 P.M. the officers met Mrs. Peggy Mendoza at the substation and advised her about the Collum deaths in Louisiana and that her sons had confessed to committing the murders. The officers then proceeded to a local airport to get Major Norman R. Diaz and Detective Dennis Rodrigue from the Lafourche Parish Sheriff's Office who were flying in that night. During the period

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between 9:30 P.M. and midnight, Mrs. Mendoza was allowed to visit with her two sons. Major Diaz and Detective Rodrigue arrived in Victorville after 11:00 P.M. and en route from the airport were (45) briefed on the situation by Sergeant Sodaro and Detective Woodrum. Major Diaz then spoke to Mrs. Mendoza and received her permission to speak with Donnie and Scott. Major Diaz and Detective Rodrigue then proceeded to interview Scott Collum. He advised of his Miranda rights from a Miranda card and he said that he understood these rights. The officers commenced taking a taped statement from him at 12:55 A.M. on June 4, 1977, and this statement was concluded at 1:28 A.M. The officers then proceeded to interview Donnie Collum. Major Diaz read the Miranda rights to him from a card that he carried on his person and Donnie indicated that he understood these rights. A taped statement was commenced at 1:47 A.M. and concluded at 2:08 A.M. On June 4, 1977, warrants of arrest for the murders of the Collum family were obtained from Judge Bernard L. Knobloch in Lafourche Parish. On that same date Donnie Collum and Scott Collum, in the presence of their mother, waived extradition proceedings before California Juvenile Court Judge John Ingro in San Bernardino County. On June 5, 1977, Major Diaz, Detective Rodrigue and Donnie and Scott Collum left California to return to Louisiana. On June 8, 1977, Donnie Franklin Collum was indicted by the

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Lafourche Parish Grand Jury for the first degree murders of Jessie Collu, Lenora Collum, Anna Collum and Jeffry Collum. On June 27, 1977, this motion to suppress was filed by the defendant and this matter was heard on August 29 and 30, 1977. The Court ordered the transcript and memoranda from the parties and this case was thereafter taken under advisement.

JURISDICTION

The defendant urges that even though he is charged with a capital offense under Louisiana Law that nevertheless he is entitled to the protection of all substantive juvenile laws enacted for his protection, "such as prohibition of detention in a police station during investigation of the case." It is clear that the (46) juvenile court does not have jurisdiction over a person 15 years of age or older who is charged with a capital offense. Article 5, Section 15, Louisiana Constitution of 1974; R.S. 13:1570 A (5); State v. Whatley, 320 So 2d 123 (1975); State v. Dubois, 334 So 2d 4112 (1976). Even though a person under the age of 18 is classified as a minor (Article 37 of the Civil Code) or under 17 as a child (R.S. 13:1569 (3)), nevertheless, if that person is charged with a capital offense, he is subject to the jurisdiction of the criminal district court and not the juvenile court system. Accordingly, substantive juvenile court laws are not applicable to this case.

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AUTHORITY OF MINOR TO CONSENT TO GIVE CONFESSION

The defendant further urges that since he was 15 years of age at the time that he gave his confessions that he could not legally waive his constitutional rights and consent to give a statement without the permission of his mother. This is clearly not the law of the State of Louisiana. In State vs. Hall, 350 So 2d 141 (1977), a case dealing with a 16 year old charged with armed robbery who was transferred from the juvenile court to the criminal district court for trial as an adult, the Louisiana Supreme Court at page 144 of the Southern Reporter observed as follows:

La.R.S. 15:451 provides that, before a confession can be introduced into evidence, the state has the burden of affirmatively proving that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, threats, inducements or promises. It must also be established that an accused who makes a confession during custodial interrogation was first advised of his Miranda rights. Miranda vs. Arizona, supra. While close scrutiny is required in determining whether the state has met its heavy burden of demonstrating that the confession of a juvenile was free and voluntary, we have held that

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the age of a defendant does not of itself render a confession involuntary. State vs. Ross, 343 So.2d 722 (La. 1977) State v. Sylvester 298 So.2d 807 (La. 1974).

(47) See also West v. United States, 399 F.2d 467 (5th Cir. 1968) cert. denied, 393 U.S. 1102, 89 S.Ct. 903, 21 L.Ed. 2d 795 (1969).

The record reflects that defendant in this case was fully informed of his Miranda rights on several occasions and that he signed a waiver of rights form. It additionally demonstrates that defendant was not threatened, abused, coerced or promised anything in return for his confession. Defendant presented no evidence to controvert the voluntary nature of his confession. After reviewing the record, we are convinced that the state satisfied its burden of affirmatively proving that defendant's confession was freely and voluntarily made after defendant had been fully advised of his Miranda rights. Accordingly, since there is no constitutional requirement of further "warnings," the trial judge did not err in denying defendant's motion to suppress and in admitting his confession in evidence. (Emphasis added)

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Further in State v. Ross, 343 So 2d 722 (1977) a case dealing with a 16 year old charged with aggravated rape the Louisiana Supreme Court observed at page 725 of the Southern Reporter as follows:

Before a written confession can be introduced in evidence, the state has the burden of affirmatively proving that it was free and voluntary and not made under the influence of fear, duress, intimidation, menaces, inducements or promises. La.R.S. 15:451, La. Code Crim.P. art. 703(C). It must also be established that an accused who makes a confession during custodial interrogation was first advised of his Miranda rights. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d (694) (1966). A confession need not be the spontaneous act of the accused and may be obtained by means of questions and answers. La. R.S. 15:453; State v. Simmons, 340 So.2d 1357 (La. 1976). While close scrutiny is required in determining whether the state has met its heavy burden of demonstrating that the confession of a juvenile was free and voluntary, we have held that the age of a defendant does not of itself render a confession involuntary. State v. Sylvester, 298 So.2d 807 (La. 1974). The voluntariness of the confession is a question of

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fact. State v. Demourelle, 332 So. 2d 752 (La. 1976); State v. White, 321 So.2d 491 (La.1975).

It is well settled that admissibility of a confession is a question for the trial judge; its weight is for the jury. Conclusions of the trial judge on the credibility and weight of testimony relating to the voluntariness of a confession for the purpose of admissibility will not be overturned on appeal unless they are not supported by the evidence. State v. Hollingsworth, 337 So.2d 461 (La. 1976); State v. Sims, 310 So.2d 587 (La. 1975). (Emphasis added)

See also State v. Sylvester, 298 So 2d 807 (1974); West v. United States, 399 Fd 2d 457 (1968), Cert. Denied 393 US 1192, 89 S CT 903, 21 L Ed 2d 795 (1969); State v. Ghoram, 328 So 2d 91 (1976). The above authorities clearly demonstrate that a minor under 18 or a child under 17 can consent to give statements to police authorities and waive his constitutional rights without parental consent. Age is a factor in determining the admissibility of the confession but is not controlling.

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OBTAINING CONFESSION OF MINOR
AT POLICE STATION

The defendant alleges that the fact that the confessions were obtained from the defendant at a police station in view of his age of 15 and contrary to the law of California and Louisiana (R.S. 13:1577) renders them inadmissible. It is clear that the provisions of the cited Louisiana Statute apply only in situations subject to the jurisdiction of the juvenile court, and not to the situation where a 15 year old is charged with a capital offense. The Louisiana Supreme Court has rendered admissible confessions of persons under 17 who are tried as adults even though they have been given in police stations, police headquarters, or the district attorney's office. State v. Ross, *supra*; State v. Whatley, *supra*; State v. Sylvester, *supra*. The cases cited by the defendant of In Re Wesley, 285 So 2d 308 (4th Cir, 1973), In Re Garland, 160 So 2d 340 (4th Cir, 1964), and In Re White, 160 So 2d 344 (4th Cir, 1964) are not applicable to the facts of this case because they involve cases under the jurisdiction of the juvenile court. Further those cases have not always been followed in the juvenile courts. In Re Campbell, 344 So 2d 711 (2nd Cir, 1977) and In Re Melancon, 259 So 2d 609 (4th Cir, 1972); CF: In Re Holifield, 319 So 2d 471 (4th Cir, 1975).

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MIRANDA WARNING FOR
8:00 PM STATEMENT

Before a confession can be introduced in evidence the state has the burden of affirmatively proving beyond a reasonable doubt that an accused in custody was first advised of his Miranda rights. Miranda v. Arizona, 384 US 436, 86 S Ct 1602, 16 L Ed 2d 694 (1966). It is clear from the record that after Donnie Collum (49) was arrested and placed in the Sheriff's vehicle that Detective Woodrum advised him of his Miranda rights from a card that he carried in his pocket. That card specifically stated as follows:

You have the absolute right to remain silent.
Anything you say can and will be used against you as evidence in court.
You have the right to consult with an attorney, to be represented by an attorney, and to have an attorney present before and during questioning. If you cannot afford an attorney, one will be appointed by the Court free of charge to represent you before any questioning if you desire.

See pages 8 and 9 of the transcript. Before both his 3:00 P.M. and 8:00 P.M. interviews by Detective Woodrum and

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(49)

Sergeant Sodaro he was reminded of these Miranda rights and on both occasions he indicated that he understood these rights and was willing to speak. Prior to the 8:00 P.M. interview, Donnie Collum had requested to have permission to speak to Sergeant Sodaro and wanted to make inquiries about what his brother Scott had told the officers. He did not at any time request that the questioning stop and at no time did he request to have an attorney present. The record further reflects that at no time did he request to have his mother present at the interview even though she was available either at home or at the police station. At the trial of the motion to suppress the defendant admitted that Detective Woodrum advised him of his Miranda rights and that he told Detective Woodrum that he understood them. He further admitted that before he was questioned he was reminded of these rights and that he said that he remembered them. See pages 312, 313, 331, 332, and 333 of the transcript.

FREE AND VOLUNTARY NATURE
OF 8:00 P.M. STATEMENT

R.S. 15:451 provides that before a confession can be introduced into evidence, the State has the burden of affirmatively proving beyond a reasonable doubt that it was free and voluntary and not made under the influence of fear, duress, intimidation, (50) menaces, threats, inducements, or promises. See

(50)

also R.S. 15:452 and C Cr P Art. 703(C). The record shows that Donnie Collum was a 15 year old person who had gone to the 9th grade and who had good proficiency in mathematics but poor proficiency in reading and writing. Under the facts of this case, the mere fact that the defendant was not particularly literate does not affect the free and voluntary nature of the statements given. State v. Neal, 321 So 2d 497 (1975); State v. Ross, 320 So 2d 177 (1975); and State v. Nicholas, 319 So 2d 365 (1975). He admitted at the trial of the motion to suppress that the police officers did not threaten him or promise anything to him and that they did not beat him. See page 318 of the transcript. A review of the testimony of the police officers shows that they did not attempt to frighten him, intimidate him, or promise him anything to get the statement. The court listened to the tape of the interview in chambers pursuant to the agreement of the parties and it indicated that the defendant was responding to a series of questions to which he gave coherent and responsive answers. The police officers asked straight forward questions which did not lead the defendant toward particular inculpatory answers. The tape reveals that the defendant was lucid, oriented as to time and place, and apparently in control of his faculties at that time. See State v. Trudell, 350 So 2d 658 (1977). The record further reflects that when Donnie

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Collum became nervous at the first interview that the first interview was immediately terminated. The record further shows that he was fed between 5:30 and 6:00 P.M. prior to giving his 8:00P.M. statement. See pages 29, 62, 73, 78, and 79 of the transcript.

For the above reasons it is the opinion of this Court that the state has met its burden of proving the admissibility of the statement given by Donnie Collum at 8:00 P.M. on June 3, 1977.

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MIRANDA WARNING ON THE 1:47 A.M.
STATEMENT

With reference to the statement given by Donnie Collum to Major Norman R. Diaz and Detective Dennis Rodrigue at 1:47 A.M. on June 4, 1977, it appears that prior to taking the statement that Major Diaz spoke to Mrs. Peggy Mendoza, the defendant's mother, and asked if he could speak with Donnie and Scott. Mrs. Mendoza replied in the affirmative. Major Diaz asked her if she wished to be present during the interview and she indicated that she would wait in the waiting room. Mrs. Mendoza further suggested that the officers talk to Scott first because he would be more cooperative. See pages 139, 140, 163, 164, and 169 of the transcript. Major Diaz testified that during the interview Donnie Collum was in good

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condition, and not handcuffed, appeared normal and had no emotional problems. Major Diaz read the Miranda rights to Donnie Collum from a card that he had in his possession as follows:

1. You have the right to remain silent.
2. Anything you say can and will be used against you in a court of law.
3. You have the right to talk to an attorney, to a lawyer, and have him present with you while you are being questioned. If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning if you wish.
4. You can decide at any time to exercise these rights and not answer any questions and make any statements.

See page 166 of the transcript in particular, and pages 140, 165, 196, 200, and 201 in general. At the trial of the motion to suppress, Donnie Collum admitted that he told them that he understood those rights. See pages 325 and 340 of the transcript.

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FREE AND VOLUNTARY NATURE OF THE
1:47 A.M. STATEMENT

The Louisiana Police Officers in their testimony clearly showed that no promises, threats, force, or intimidation were used to secure the statement from Donnie Collum. See pages 142, 169, 196, 206, 207, and 208 of the transcript. In his testimony at the trial, Donnie Collum admitted that the Louisiana Police Officers did not promise him anything or threaten or force him to give his statement. See pages 325, 340, and 341 of the transcript. Pursuant to the agreement of the parties the court in chambers played the tape of the interview held with Detective Rodrigue and Major Diaz at 1:47 A.M. on June 4, 1977. The tape indicated that Donnie Collum was responding to a series of questions to which he gave coherent and responsive answers. The tape further showed that the police officers asked straightforward questions which did not lead the defendant toward particular inculpatory statements. The statement itself reveals that the defendant was lucid, oriented as to time and place and apparently in control of his faculties at the time. State v. Trudell, supra.

For the above reasons it is the opinion of this Court that the taped statement given by Donnie Collum to Major Diaz and Detective Rodrigue at 1:47 A.M. on June 4, 1977, is admissible in these proceedings and was taken in accordance with the requirement of law.

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ORAL INCULPATORY STATEMENTS

At the trial of the motion to suppress, evidence was taken concerning oral statements given by Donnie Collum while going to Van Horne, Texas and in Van Horne, Texas. The admissibility of these statements will not be determined in this proceeding. Oral pre-trial statements are not properly the subject of a motion to suppress pursuant to Article 703 of the Code of Criminal Procedure State v. Perkins, 337 So 2d 1145 (1976); State v. Daniels, 262 La. 475, 263 So 2d 859 (1972); State v. Hudson, 253 La 992, 221 So 2d 484 (1969).

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For the above reasons the motion to suppress in this case is denied and judgment will be rendered accordingly.

Respectfully submitted,

/S/ WALTER I. LANIER, JR.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District
Court
Parish of Lafourche
Division "A"

C E R T I F I C A T E

I certify that a copy of this per curium has been forwarded to Mr. John J. Erny, Jr., Assistant District Attorney,

(53)

P. O. Box 9, Larose, Louisiana, 70373,
and Mr. Herbert O'Niell, Attorney at Law,
Oil & Gas Building, 206 Green Street,
Thibodaux, Louisiana, 70301, sufficient
postage annexed thereto.

Thibodaux, Louisiana, this 13th day
of December, 1977.

/S/ WALTER I. LANIER, JR.
WALTER I. LANIER, JR.
JUDGE, 17th Judicial District
Court
Parish of Lafourche
Division "A"

TRANSCRIPT OF PROCEEDINGS
STATE VS. DONNIE FRANKLIN COLLUM
VOLUME II

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(10)

A. No, sir.

Q. Did they appear to be alert to you at this time?

A. Yes, sir.

Q. After advising them of their rights and reading the waiver to them, did you receive any responses from either of the two individuals?

A. Yes, sir.

Q. What did they tell you?

A. Well, I asked each one individually if they understood the rights, and each one individually said they did.

Q. And this was still in the automobile, correct?

A. Yes, sir.

Q. How long did it take to travel from the trailer park to the police station? To the Victorville Sub-Station, is it?

A. Yes, sir.

Q. How long was that?

A. Five minutes probably.

Q. After you arrived at the sub-station,

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(10)

what's the first thing that you did, Detective Woodrum?

A. We brought both the juveniles into the sub-station and took them to a little interview room in the sub-station and seated both of them in the interview room and shut the door. Had an officer stand outside the door while Sergeant Sodaro and I went get our notebooks and prepared to interview them.

Q. Did you attempt to interview both of these individuals together?

A. No, sir.

(11)

Q. Who was the first individual that you interviewed?

A. Donnie Collum.

Q. And approximately what time did this interview begin?

A. Just about three P.M.

Q. And again, who was present with you at this time?

A. It was still myself and Sergeant Sodaro.

Q. Prior to your interrogation or your

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(11)

interview, did you again speak to Donnie Collum with reference to his Miranda rights?

A. Yes. I did.

Q. And what exactly did you say to Mr. Collum?

A. I asked him if he recalled his constitutional rights that I had just advised him of a short time earlier, and he stated that he did.

Q. Did you ask him if he was willing to speak to you?

A. Yes, sir.

Q. And what was his response?

A. In the affirmative. Yes, he was.

Q. Did you then proceed to interrogate Donnie Collum?

A. Yes, sir.

Q. What was your interrogation concerned with at this time, Detective Woodrum?

A. How he became in possession of the Cadillac that we picked him up on. I explained to him at the start of it that we wanted to know how he

A-157

(11)

became in possession of the Cadillac and the circumstances surrounding his possession of the (12) Cadillac up until the time the Arizona authorities picked him up.

Q. At this time did you question him with reference to the death of his father or other members of the Collum family in Louisiana?

A. Not at that time, no, sir.

Q. Did you subsequently--

A. Yes, sir.

Q. -- during this interrogation discuss this with him?

A. Yes, sir.

Q. Prior to this, did you again advise him of any rights?

A. Yes.

Q. In what manner, Detective Woodrum?

A. When we finished talking about the car, I told him that there was something else that we wished to talk to him about. I asked if he still recalled the rights that I had explained to him earlier. He stated that he did. I told him that we

(12)

(12)

(13)

wished to talk to him in reference to some other information we had about the car. I asked him if he was still willing to talk to us, and he stated he was.

Q. Okay. Did you tell him what that information was?

A. At that -- when he said he would still talk to us, I did, yes, sir.

Q. What exactly did you tell him?

A. I think I first asked if he knew why his dad would file charges on him for taking the car, (13) and I think he said because he felt his dad wanted to get him in trouble. I think I then told him that his parents or his dad did not sign a stolen vehicle report, that his dad had been shot in Louisiana.

Q. Pardon? I'm sorry.

A. That his dad had been found shot in Louisiana.

Q. At this point in time what was Donnie Collum's reaction to that statement?

A. His immediate reaction to that statement, he became very nervous. His hands began to tremble, and he was emotionally upset at that time.

(13)

Q. Did you continue the interrogation?

A. Just briefly, and then we terminated it.

Q. At this time did Donnie Collum make any statements to you relative to his involvement in the death of his father, in the death of his father?

A. He denied any involvement in it, yes, sir.

MR. O'NIELL:

I'm sorry. I didn't hear the answer.

A. He denied any involvement in the death of his father.

BY MR. NAQUIN:

Q. What's the next thing you did, Detective Woodrum?

A. Well, the next thing is we then started an interview with his brother, Scotty Collum.

Q. With Scotty?

A. Yes, sir.

Q. Let me ask you this. Do you know how long that first interview with Donnie lasted?

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(14)

A. Oh, I would say probably thirty minute, maybe forty minutes.

Q. At anytime did he request that you stop questioning him?

A. No, sir.

Q. At anytime did he request that an attorney be present?

A. No, sir.

Q. At anytime did he refuse to answer any questions?

A. No, sir.

Q. Do you know what approximate time your interview with Scotty Collum began?

A. It was approximately four o'clock.

Q. Did you follow the same procedure with Scotty Collum that you had followed with Donnie?

A. Yes. I did.

Q. Again, would you explain to the Court exactly what that procedure was as far as the advise of of rights and the questioning?

A. Yes, sir. When we contacted him again, I again identified ourselves

A-161

(14)

to him and explained a little bit why he was there, why we wished to talk to him. I then asked him if he recalled the rights that we had explained to him earlier when we picked him up, and he told us he did. I think I might have asked whether he wanted to hear it, but I don't recall. I asked if he was still willing to talk to us, and he said he was.

Q. Did you at that time question him with reference to the automobile?

A. Yes, sir.

(15)

Q. And he answered all of your questions?

A. Yes, sir.

Q. Did Scotty Collum ever request that you cease the interrogation?

A. No, sir.

Q. Did he ever request that an attorney be present?

A. No, sir.

Q. Did he ever refuse to answer any questions that you asked of him?

(15)

(15)

A. No, sir.

Q. Did you later on in the interrogation speak with Scotty Collum with reference to the death of his father?

A. Yes, sir.

Q. Prior to this interrogation did you again advise Scotty of his Miranda rights?

A. It was the same procedure that we used for Donnie. I just reminded him of his rights again, and I told him that we wished to talk to him in reference to some more information about the car, and I asked if he was still willing to discuss the case with us, and he stated he was.

Q. What was his initial reaction when you advised him of the death of his father?

A. Well, he indicated that was the first he heard that his father had been shot and he knew nothing about it, but he showed no emotional reaction like Donnie did.

Q. How long, Detective Woodrum, did you question Scotty with reference to the death of his father?

A. Altogether it was probably over an

(15)

hour, maybe

(18)

Q. Okay. What did you reply, Detective Woodrum?

A. We told him that his brother had given us a statement implicating both Donnie and himself in the homicides.

Q. What was Donnie's reaction or what did Donnie have to say with reference to this?

A. He wanted to know what his brother said again and wanted to know if he could hear the tape. We told him that we had obtained a taped statement. He requested to hear the taped statement.

Q. Did you permit him to hear the tape?

A. No, sir. But we did permit him to hear a short portion of it.

Q. You played a short portion of Scotty's tape?

A. Yes, sir.

Q. Do you recall the portion that you played to him?

A. I don't recall the exact portion

(18)

(18)

personally, I don't.

Q. Did it in fact deal with the actual killing of Jessie Collum, his father?

A. Yes, sir.

Q. After Donnie listened to this particular portion of the tape, what did Donnie say to you, if anything?

A. As I recall, we only played probably thirty seconds of the tape, just enough that he could hear that we're not lying to him, and he said that Scotty told it right down the line.

Q. Is that the way he described it, Scotty told it right down the line?

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A. We were requested to interrogate them in reference to the stolen vehicle and then interrogate them in reference to the homicides, yes, sir.

Q. When you brought them to the sub-station -- what is the sub-station?

A. It's one of several. We have about eight sub-stations in San Bernardino County. And the sub-station was located in Victorville. It covers the Victor Judicial District

(36)

(36)

which is approximately 22 hundred square miles.

Q. Is this a regular police station?

A. It's a regular sheriff's department, yes, sir.

Q. Were there any uniformed officers in the station when you brought them in there?

A. I'm sure there was, sir, yes.

Q. These boys were confined in cells at the time they were locked up in the station before interrogation?

A. No, sir.

Q. Wasn't Donnie removed to a cell and later brought back?

A. After we first spoke with Donnie, when we finished our first interview with Donnie, he was then I believe taken back for booking process.

Q. You spoke with his mother at the time that you made the arrest, is that correct?

A. Yes, sir. Briefly, I did.

Q. Did you tell her at that time what you were arresting them for?

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A. Yes, sir.

Q. What did you tell her?

(37)

A. I told her we were taking them into custody on the authority of the Louisiana authorities here for investigation of the auto theft charges.

Q. Did you tell her that they were suspects in a murder case?

A. I did not.

Q. Did you tell her that Jessie Collum, her former husband, was dead?

A. Not at that time, no, sir. We eventually told her that, yes.

Q. Did you ever tell her this prior to the time that you took statements from either Scott or Donnie Collum?

A. No, sir.

Q. Isn't it a fact that Mrs. Mendoza, the mother of these two boys, went to the station shortly after you got there?

A. I don't know how soon she arrived at the station, but I did meet with her at the station. It was sometime

(37)

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(37)

later. In fact, it was probably a couple of hours later when she came down.

Q. But did she not go there shortly after? You did not see her until several hours later?

A. She may have arrived shortly after, but I did not see her, sir.

Q. You did not tell her to go home?

A. No, sir.

Q. How did she get to the station later? Didn't you go and pick her up or tell her to come back, that she could come back to the station?

A. I personally did not, no. I don't know how she

(42)

A. They were together for a period of time up until we started the interviews.

Q. At what time did you take these boys before a court or a juvenile officer or any other person connected with the juvenile process?

A. I personally did not take them before the --

(42)

(42)

Q. They were in your custody and actually under your control for at least seven hours, is that correct, or longer? How long -- after you brought Major Diaz back, how long did he interrogate them that night?

A. I would imagine it was probably about midnight when he started talking to them.

Q. How long did he talk to them?

A. I can't recall. I would say that he was probably -- he talked to both of them probably up until about two A.M. That's a guess, but somewhere around there.

Q. Did he take a statement at that time?

A. I believe he did, yes, sir.

Q. Had any attempt been made to comply with the California law to bring these boys before a magistrate?

A. We complied with all the California laws with reference to the arrest.

Q. Well, did you bring them before a magistrate at anytime between two o'clock or 2:25 in the afternoon and two o'clock the following morning?

(42)

A. No, we did not.

Q. Did you notify juvenile authorities that they were in your custody?

(47)

Q. Donnie was then -- you don't know what was happening to his mother during this time, do you, and her daughter?

A. No. They may have been at the office. I don't know.

Q. Is there any reason why they would not be permitted to talk to these boys prior to your questioning?

A. No. In California if the parent requests to be present during the interview with the juvenile, then they have to be present. If the juvenile requests his parents to be present, then we have to let the parent be present.

Q. Did you ask Mrs. Mendoza if she wished to be present?

A. I didn't, no, sir.

Q. But you understood the serious nature of the possible charge against this boy?

A. I understood that they were under

(47)

(47)

investigation for the homicides, yes.

Q. And you did not tell her what the investigation was for?

A. No. I told her the reason we were picking them up when we went out to the trailer home.

Q. Did you consider at anytime during these interviews that either of these boys should have an attorney?

A. I'm not sure I follow your question.

Q. Did you ever consider whether or not it would be advisable to their interests for them to have an attorney consult with them before they talked to you?

(71)

Donnie's mother and his sister, and we asked them if Donnie and Scotty were there, and she told us that they were next door at the other trailer.

Q. Did you proceed to the next trailer?

A. Yes, sir. We went to the trailer, made contact with the juveniles, identified ourselves, and placed them under arrest.

(71)

(71)

- Q. Did you advise them at that time why they were being arrested?
- A. Yes, sir. I believe we did.
- Q. And what was that?
- A. For investigation of grand theft auto.
- Q. What is the first thing that you did after you arrested these individuals?
- A. We handcuffed them and put them in the detective unit.
- Q. Okay. While in the detective unit did you or anyone else in your presence advise these individuals of any of their Miranda rights?
- A. Yes, sir. We did.
- Q. Who specifically did this?
- A. Detective Woodrum.
- Q. Was this done in your presence?
- A. Yes, sir. It was.
- Q. Do you carry any type of card with the Miranda warnings?
- A. Yes. All of the officers have cards that have been issued to them from

A-172

(71)

(81)

the district attorney's office.

- Q. Was this card used in these warnings?
- (81)

I think briefly as we left the office, because we were going down to the airport to meet Major Diaz and Detective Rodriguez. And that's what we did. We went down and picked them up from the airport.

- Q. To your knowledge had the mother of Donnie and Scotty Collum ever requested to see her sons?
- A. You're talking about before the interviews?
- Q. That's correct.
- A. I don't know. She may have.
- Q. Did she request of you?
- A. She may have, and if she did I would have told her that when we were through with the interview she could see them.
- Q. Do you recall seeing her at the police station?
- A. Yes. We told her to come down there and we would discuss the matter with her.

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- Q. Did you see her prior to or after the interviews?
- A. I believe it was after the interviews.
- Q. Did either Donnie or Scotty request of either you or Detective Woodrum permission to see their mother?
- A. No, sir. Not prior to the interviews, no sir.
- Q. Not prior to the interviews?
- A. No, sir.
- Q. Okay. Sergeant Sodaro, how long have you been in law enforcement?
- A. Oh, over ten years.
- Q. And how long have you occupied the position as a sergeant?
- A. About three years.

(89)

authority to arrest people from out of state, upon their request, is legal in California, and it is legal to make a felony arrest in California on verbal information received from another police officer.

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(89)

(89)

- Q. And this is the only probable cause you need to make an arrest?
- A. Yes, sir.
- Q. Is that somebody else says a crime might have been committed in Louisiana?
- A. If he is a police officer and we feel that his information is valid, we have probable cause to make the arrest.
- Q. You do not have a requirement that there must be a warrant outstanding for the person?
- A. No, sir. I'm sure that if they don't pick up the prisoner within five days then they will be released from custody in California.
- Q. When you talked to Mrs. Mendoza, the mother of these boys, what did you tell her that they were being arrested for?
- A. At the time we made the arrest we told her for the theft of the auto.
- Q. Did you inform her that you intended to interrogate them relative to murder?
- A. No, sir. We did not.

A-175

(89)

Q. But at that time you did intend to interrogate them as to the murders?

A. I believe we did, yes.

Q. Did you have any reason why you did not inform her of your intentions?

(118)

A. He wanted to talk to me.

Q. At what stage --

A. I don't really believe he interrupted. I think it was when I had went out in the hall for something. I'm not sure if it was to get a drink or to get Scotty a drink or what it was. And I was advised that Donnie wanted to see me.

Q. What did you tell him?

A. I believe I went back and talked to Donnie and told him that we were still busy with his brother and as soon as we were finished I would come back and get him and we would talk to him again.

Q. He never at that time asked you for a lawyer?

A. No, sir. He did not.

Q. He never asked to see his mother?

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(118)

A. No, sir. He did not.

Q. He never asked to see his brother?

A. No, sir. He did not.

Q. And he never indicated to you what he wanted to talk about?

A. No, sir. He did not.

Q. What time was it that you brought Donnie down the second time?

A. I believe it was sometime around eight o'clock.

Q. He had been in custody either handcuffed or handcuffed to a chair or locked in a cell for approximately five and a half to six hours at this time, is that correct?

A. Somewhere around there, yes, sir.

Q. Tell me what happened when you brought him into that room.

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STATE VS. DONNIE FRANKLIN COLLUM
Volume III

(5)

curately and to shy away from questions that blatantly approached the crime. Using the history about his experience in Special Ed. and trying to coordinate that as closely as I could with my impressions at interview it was my impression that this young man was quite dull mentally and I roughly evaluated his mental age as seven to ten years, but I could at no time during the interview see or detect any real signs of mental illness and at one time during the interview when questioned about mental illness, he made the statement that he knew he was not mentally ill. To sum this up, my conclusions were that it was my impression that at the time of the alleged crime -- first, let me make this. My impression was that this young man was quite dull mentally with a mental age of seven to ten years, but he has no overt signs of mental illness. It was my impression at that time that at the time of the alleged crime that these conditions were similar to those at the time of the exam. However, that they could have been very forceably changed with the use of drugs, which could have happened in this instance. At present I feel that he is legally sane and within the confines of his limited I.Q. is able to assist his attorney in his own defense. He is also aware that he is charged with

(5)

(239)

four counts of Murder and could be sentenced to the electric chair.

Q. Doctor, did you find anything to indicate that any

(239)

Q. Specifically, sometime around 2:30 in the afternoon would you state what occurred?

A. I was -- my daughter had rented the trailer next to ours, which was Space Nine. We lived in Space Ten. And I was over there sewing and making Debra a blouse. And Officer Sodaro and Officer Woodrum came to Deb's trailer, and he said, "Are you Mrs. Mendoza?" And I said, "Yes. I am." And he said, "Where is Donnie and Scotty?" And I said, "Well, they're over at the house, I guess." And they were. They were sitting in front of the house in some lawn chairs having a glass of tea. And Officer Sodaro, he showed me his badge at that time, and he walked around the corner there to the front -- to the side of our trailer. And he said, "Are you Donnie?" and "Are you Scotty?" to the boys. And they said, "Yes, sir. We are." And so he said, "I'm arresting you for grand auto theft." And --

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(243)

Q. Did he tell you what he intended to do before doing this?

A. No, sir. He didn't. And he made the boys stand up, and put his hands down the side, you know, to see if they had anything on them, I guess. And they put handcuffs on them and they took them.

Q. Did you have any conversation with them?

A. Any conversation with them?

Q. With the two officers.

A. Well, you know, you're kind of shook when they come and arrest your boys. And I asked them

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was a blond-headed man behind the desk also. And Officer Sodaro came out, and I said, "There's been no warrant on that car," you know, "Jessie hadn't signed a warrant or Lenore hadn't signed a warrant." And I said, "You'll have to release my boys." And he said, "Well, now we just want to talk to them, ask them some routine questions," and he said, "Go on back home." And he said, "Whenever we get through, he said, "I'll send somebody over to tell you so that you can come get

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the boys." Okay. I went back home and I waited. And I kept calling in the meantime, and I must have called three or four or five times. And about -- it had to be approximately around 9:30 or ten. A policeman came back up there to the trailer, and he told me, "You can see your boys now." So I went back to the police station. And Officer Sodaro and Officer Woodrum met outside the sheriff's office, you know, where the boys were. And he told me, he said, "I've got some bad news for you." And see, at this time I didn't know any of this other -- I thought Jessie had been shot -- you know, my boys had been home a week nearly. And he said, "Your boys have confessed to four murders," and I went all to pieces. I mean I absolutely went all to pieces. And so he told me, he said that I could see them, you know. So I went in. Me and Debbie was together all this time. And I went in and I sat down --

Q. Who is Debbie?

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A. Well, just where the handcuffs had been. He was -- his wrists were blue.

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BY THE COURT:

Q. On both wrists?

A. On both wrists, yes, sir.

BY MR. O'NIELL:

Q. Were there any cuts on them or scratches?

A. No. I didn't notice any cuts or scratches.

Q. Mrs. Mendoza, when you first went to the sheriff's office at Victorville, did you ask to see the boys?

A. Yes, I sure did. That's what I was there for.

Q. You stated that you were told to go home. Do you remember exactly how you were told to go home?

A. He just told me, he said, "I realize there's no charges on the car." He said, "We're just holding them for --" how did he put that? Oh, he said, "Routine." He said, "Routine questioning." And I thought maybe they were going to ask them if they knew anything about, you know, people that might have been around or anything like that. I didn't know when it had happened, and I didn't associate it with the

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boys at all at that time.

Q. Why didn't you wait until they finished --

A. What?

Q. Why didn't you wait until they finished their questioning to bring the boys home?

A. Because they wouldn't let me. They told me to go home and that they would send somebody out there and tell me when I could come back. And he told me that I could call, which I did, several times. But the man wouldn't give me any information because (249) it was up to Officer Sodaro, and he was in with the boys. And everytime I'd call he'd say, "He's not through questioning them yet," and, "Call back at such and such a time and you can talk to him."

Q. The first person that told you that this was routine questioning, who was that?

A. It was Officer Sodaro himself.

Q. You know Officer Sodaro?

A. Yes. I do.

Q. You saw him in this courtroom

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yesterday?

A. Yes. I did.

Q. You were not permitted to go back there until after these statements had been made, is that correct?

A. That's right.

Q. Now, am I correct that you were at the police station on your second visit that night when Major Diaz and Officer Rodrigue arrived?

A. Yes, sir. I waited for them.

Q. Now, at that time did they tell you that they were going to take a statement from these boys?

A. No, sir. They did not.

Q. What did they tell you? What did you understand them to say?

A. Well, we went in this little office thing, and he wrote down -- I've still got the slip of paper. He wrote down his name, his address and his phone number. And he told me your name, that you would be appointed as public defender. Your name's on it in his handwriting right in my purse

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BY MR. O'NIELL:

Q. Just what you know. Not what anybody told you.

A. Okay. And so we left, and we went up to the police department, and mother asked the lady there that was working at the desk --

Q. Were you present at the time she asked this?

A. Yes, sir. I was.

Q. All right.

A. And she asked if she could talk to someone that was over the Collum boys that had been just brought in. And the lady called Sodaro, she said that we would have to wait a few minutes for him to come out front. And so we sat down and we waited a few minutes, and he came out and he said that they were questioning the boys. And mother said, "Well, what are they being held on," because she had called Louisiana and there wasn't no charges, nobody had put charges on the car. And he didn't say anything, and he said that they were still questioning the boys, that she would have to come back later after they had finished questioning them. And so we kept calling. We called about

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three times, and he was still questioning them. And so about 9:30 or ten an officer came to the house and said that we could go up there and talk to the boys, and he said if they could have got the boys sooner maybe they could have saved four lives. And so we got our purses and we went up there, and we had to wait, you know, a few minutes. And Sodaro and Woodrum came out as we were getting out of the car and said -- told my mother that

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A. Yes, sir.

Q. Approximately what time?

A. It was 2:30.

Q. Would you tell the Judge in your own words exactly what transpired from that time up to the time of the -- up to the time that you were taken from the booking room and put in the cell?

A. Well, I didn't get put in the booking room --

Q. Not in the booking room. The interrogation room at the jail. Go ahead.

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- A. Well, me and Scotty was sitting out in front of the house drinking tea and listening to the radio, waiting for his girlfriend to get out of school. And a whole bunch of policemen come up there to the house and they asked us if we was Donnie and Scotty Collum.
- Q. How many policemen were there?
- A. Well, I seen a whole bunch of them, but the ones that handcuffed us and stuff was Sergeant Sodaro and Detective ---
- Q. Go ahead and tell the Judge.
- A. Well, they read us our rights, they handcuffed us in the rear, and they took us and put us in the car. And on the way down we talked about weather and stuff like that, small talk.
- Q. Let me ask you something. When did they read you your rights?
- A. Well, they read them when they put the cuffs on, but -- yes, I think they did read them when they put the cuffs on. I ain't for sure.
- Q. Did they read them to you after that, on the way to the station?

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- A. Yes. Driving to the station.
- Q. Who read them do you?
- A. No. He didn't say -- I don't believe, but I ain't for positive, that he didn't say them before we got in the car and starting driving.
- Q. When did he say them?
- A. When we were driving down to the station. He started when we was parked there and backed out, and by the time we got done backing out he had done it.
- Q. It was in the car?
- A. Yes.
- Q. When you were backing out?
- A. (The witness nodded affirmatively.)
- Q. Well, was it when you were handcuffed or not?
- A. Yes, but I ain't for sure if he read them to me or not before that time.
- Q. Well, did he read them to you at the time he handcuffed you?
- A. I really don't remember.

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- Q. But you do remember him reading them to you as you were backing out?
- A. Yes.
- Q. Who read them?
- A. The guy that was driving.
- Q. Who was driving?
- A. I thought that it was Sergeant Sodaro, but I guess I wasn't for sure.
- Q. You're not certain?
- A. No.
- Q. Okay, well, go on. Tell the Judge what happened.
- A. Well, when we got down to the station they put me (314) and my brother in the room, and they separated us after around fifteen minutes.
- Q. All right. Now, when they put you in that room, what did they do?
- A. They took one of the handcuffs off and put it on the chair.
- Q. Going down to the station, how were you handcuffed, front or back?

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- A. Back.
- Q. When you got to the station they took one off?
- A. Yes.
- Q. Were these handcuffs tight on you?
- A. Yes. They were supertight.
- Q. Did you ask anything about them?
- A. I asked Sergeant Sodaro to loosen one, the one that wasn't handcuffed to the chair, and he did.
- Q. But they weren't loosened before that?
- A. No.
- Q. But you didn't complain before them?
- A. No.
- Q. When you did complain he did loosen them?
- A. Yes, sir.
- Q. All right. Proceed.
- A. Well, we got in there, they separated us after around fifteen minutes, then they come in, they started

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questioning me.

Q. Go on.

A. It was mostly about the car charges, you know, how we become possession in the car, of the car. And then they started asking us questions, if we had a firearm and all of this about the firearm, and then (315) they told us that they were shot, you know, they told me.

Q. That who was shot?

A. That Jess was, my dad. And I said I didn't know nothing about it, and they asked me a couple more questions, and then I said I wanted to see an attorney, and he said, "Okay. Let me ask you a couple more questions."

Q. Now, what questions did he ask you after that?

A. Around four, five maybe.

Q. What kind of questions?

A. My name, stuff like that. But I ain't for sure. I think it's about my name and how old I was and stuff like that.

Q. Nothing to do with the murders?